ant's railroad, and was in charge of and traveling in one of two dead engines of his employer being transported on their own wheels, although he had been informed by conductor that he would have ample time to inspect and oil his engines at the stops, was guilty of negligence barring recovery for injuries sustained while he stepped off his engine and stood on the piston rod examining and oiling it, where the train only stopped for a minute on an automatic block signal, and he took the hazard without apprising the train crew or attempting to put himself into communication with them.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1383, 1384.* 2 Va.-W. Va. Enc. Dig. 708.]

2. Negligence (§ 80*)—Contributory Negligence—Proximate and Efficient Cause.—Where the negligence of a party contributes proximately and efficiently to his injury, there can be no recovery.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 84, 85.* 10 Va.-W. Va. Enc. Dig. 380 et seq.]

Error to Hustings Court of Richmond.

Action by L. J. Jones against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Reversed.

D. H. & Walter Leake and *Henry Taylor,* all of Richmond, for plaintiff in error.

L. O. Wendenburg and *T. Gray Haddon,* both of Richmond, for defendant in error.

JENNINGS *v.* MARSTON.

June 14, 1917.

[92 S. E. 821.]

1. Ejectment (§ 15 (1)*)—Proof—"Common Source of Title"—"Common Grantor."—The rule that plaintiff in ejectment need not trace title back of the common source does not apply where the real dispute is as to the location of a boundary line between two distinct tracts, one of which the common grantor derived from one source and conveyed to plaintiff, and the other of which he derived from another source and conveyed to defendant; the terms "common grantor" and "common source of title" not necessarily being synonymous, and the inconsistency of permitting a defendant to claim both under and against the same title not arising in such case.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 59.* 4 Va.-W. Va. Enc. Dig. 882.]

2. Estoppel (§ 32 (1)*)—By Deed—Purchase of Land.—That the deed under which plaintiff in ejectment claims fixes the southern

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

boundary of the land as the middle of a stream forming a mill pond, instead of the edge of the pond, does not estop the grantors from subsequently buying the land in dispute, where their deed to plaintiff was made merely to secure a debt, and contained no warranty of title.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. § 81.* 5 Va.-W. Va. Enc. Dig. 206, 214, 218.]

3. Ejectment (§ 9 (2)*)—Title of Plaintiff.—Plaintiff in ejectment must recover on the strength of his own title, which he must connect with the commonwealth or with a common source with that of defendant, where defendant is not a mere trespasser or intruder, but holds a deed for the land under which he is exercising the acts of ownership and possession resulting in the ejectment suit.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 17.* 4 Va.-W. Va. Enc. Dig. 876, 877.]

4. Waters and Water Courses (§ 111*)—Boundaries—Ponds—Stream.—A deed describing land as bounded on the south by a mill pond did not convey land to the middle thread of a stream forming the pond, where it appeared that the grantor did not own or claim further than the edge of the pond at the time of the execution of the deed.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. § 120.* 2 Va.-W. Va. Enc. Dig. 590, 591.]

5. Waters and Water Courses (§ 89*)—Riparian Owners—Boundaries—Presumption.—Riparian owners on nonnavigable streams are presumed to own to the middle thread of the stream; but this presumption is rebuttable, and yields to proof that the edge of the stream is the true boundary line.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 91, 92, 107.* 2 Va.-W. Va. Enc. Dig. 590; 13 Va.-W. Va. Enc. Dig. 678.]

6. Waters and Water Courses (§ 89*)—Land Conveyed—Boundaries.—Where riparian owners on a nonnavigable stream own to the middle of the stream, and convey by a deed calling for the stream as a boundary, they are conclusively presumed to convey to the middle, unless they expressly exclude that presumption by words in the conveyance.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 91, 92, 107.* 2 Va.-W. Va. Enc. Dig. 590, 591.]

Error to Circuit Court of City of Williamsburg and of James City.

Action by Ann E. Marston against A. W. Jennings. Judg-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ment for plaintiff and defendant brings error. Reversed and rendered.

S. O. Bland, of Newport News, and *Henley, Hall & Hall,* of Williamsburg, for plaintiff in error.

Frank Armistead and *B. D. Peachy, Jr.,* both of Williamsburg, for defendant in error.

EASTERN COAL & EXPORT CORP. *v.* BEAZLEY & BLANFORD.

June 14, 1917.

[92 S. E. 824.]

1. Trial (§ 252 (1)*)—Instructions—Applicability.—It is error to give an instruction when there is no evidence to support it.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 596, 612.* 16 Va.-W. Va. Enc. Dig. 702.]

2. Trial (§ 200 (1)*)—Requested Instructions Covered by Other Instructions.—Since instructions are to be read as a whole, the refusal to give requested instructions covered by other instructions given is not error.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 651.* 16 Va.-W. Va. Enc. Dig. 709, 710, 711, cited by the court.]

3. Sales (§ 418 (7)*)—Damages—Avoidable Consequences.—The doctrine of "avoidable consequences" does not permit a seller, breaching his contract to furnish coal of a certain quality, to compel the buyer to enter into a contract for the same coal with another seller for the defaulting seller's protection, the defaulting seller being himself unwilling to incur the hazard of such contract, for such doctrine has to do with consequential loss only, and not to damages claimed for injury arising from direct breach of the contract, namely, the loss of the value of the contract itself.

[Ed. Note.—For other cases, see Sales, Cent. Dig. § 1188.* 4 Va.-W. Va. Enc. Dig. 212.]

Error to Law and Equity Court of City of Richmond.

Action by Beazley & Blanford against the Eastern Coal & Export Corporation. Judgment for plaintiffs, and defendant brings error. Affirmed.

S. S. P. Patteson, of Richmond, for plaintiff in error.

R. L. Montague, of Richmond, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.